



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI-92-20

### FACTS:

You are the superintendent of a public school system. You are also a member of the ABC Users' Committee (Committee), a private organization apparently set up by a computer company. You have been invited to attend a meeting of the Committee. The computer company will pay for your travel, hotel and meals costs. You will receive no compensation or honorarium for attending the meeting. You state that you are the only school superintendent on the Committee this year and you feel that you can play an important role in private funding support for schools. Your appointing authority, the school committee, is pleased with your invitation and has instructed you to use work rather than vacation time for the conference. It was agreed that you would not be representing your school system at the meeting but rather that you will be representing a user group and you will be identified only as an "educator" or an "educational manager". Your school system has previously received several pieces of equipment and software from the computer company. You state that as a superintendent, you have purchased their products for all of the school systems with which you have been associated.

### QUESTION:

May you accept payment by the computer company of your travel, hotel and meals costs associated with your attendance at the meeting of the Committee?

### ANSWER:

No, unless the town adopts a by-law or charter provision authorizing municipal employees to accept vendor payments of travel expenses.

### DISCUSSION:

As Superintendent, you are a municipal employee for purposes of G.L. c. 268A, the conflict of interest law, and, as such, you are subject to the requirements of §3 of that law. Section 3(b) prohibits a municipal employee, otherwise than as provided by law for the discharge of his official duties, from soliciting or accepting anything of substantial value for or because of any official act performed or to be performed. Anything valued at \$50 or more is "of substantial value." *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *Commission Advisory No. 8*. Section 3 may be violated if a public official receives something of substantial value, whether the gift is given as a token of gratitude for a well-done job or is given out of a desire to maintain the public employee's goodwill. Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. *Public Enforcement Letter 92-1*.

The Commission has consistently found that §3(b) is violated when a public employee receives direct payment or reimbursement of travel expenses from a vendor of the agency by which the public employee is employed. In *EC-COI-88-5*, the Commission rejected the contention that the value of the trip expenses accrues to the municipality rather than to the traveler. See *In re Pitaro*, 1986 SEC 271 (where Commission held that travel privilege of substantial value accrued to mayor himself). We have found that whenever a specific public employee is able to take a trip at the expense of a private entity, there is a benefit of substantial value to the individual traveler, thereby implicating §3.

Sound public policy supports the Commission's application of §3 to the receipt by public employees of vendor-paid travel expenses. As the Commission stated in *EC-COI-82-99* (where members of a state board of registration, traveling to view equipment proposed by a manufacturer, were prohibited from receiving travel

expenses from the manufacturer),

a system wherein the manufacturers of products pay for trips by state employees is clearly open to abuse by the state employees as well as the manufacturers. State employees could exploit this system in order to procure unwarranted privileges. And, the public impression that state employees were improperly influenced in their decisions could arise. Manufacturers, on the other hand, may view the quality of the accommodations and accouterments on these trips as more important than the quality of their products.

The Commission has previously acknowledged that there may sometimes exist legitimate public purposes to justify a public employee's travel, and that the public interest may be served by allowing private entities to pay for a public employee's travel expenses. Nevertheless, the Commission believes that the restrictions placed on public employees by §3 ensure that the public employee's integrity is not compromised in the name of conserving public funds. However, §3 concerns may be overcome if the municipality adopts a by-law or charter provision allowing vendors to pay for travel if a municipal governing body pre-approves all vendor-funded travel expenses, thereby ensuring that the expenses are legitimate and minimizing the risk that the employee is being "wined and dined". See *Public Enforcement Letter 90-1; 90-2; see also EC-COI-92-10; 88-5*. Travel expenses paid by a vendor under such a by-law or charter provision would be "as provided by law" under G.L. c. 268A, §3 and would not give rise to a violation.

In your case, where you have previously entered into contractual relations with the donor, and where, in your position as Superintendent, you have the ability to act in the future to benefit the computer company, §3 is implicated. If you accept something of substantial value from the computer company, any future official action which you may take as Superintendent with respect to the computer company could reasonably be called into question. Even if you perform objectively as Superintendent, there would be an appearance that you could be influenced by your prior receipt of the travel expenses. By prohibiting your receipt of a gift outright, §3 prevents any potential conflict of interest. See *EC-COI-87-38 (citing In re Pitaro, 1986 SEC 271)*. Absent a by-law or charter provision regulating vendor paid travel, you therefore may not accept anything of substantial value from the computer company, including your travel, hotel and meals costs valued at \$50 or more.<sup>1/</sup>

We have reviewed your statements as to why you believe your receipt of travel costs should be permissible. Although we believe that your reasons for attending the committee meeting are meritorious and that your commitment to education is commendable, we must continue to assure the integrity of public service through our enforcement of the conflict of interest law. As explained above, the potential for abuse in connection with vendor-paid travel expenses outweighs those legitimate reasons that may make such an arrangement desirable.<sup>2/</sup>

**Date Authorized: June 16, 1992**

<sup>1/</sup>Even though the payment of your conference expenses by the computer company appears to stem from your position on the Committee, you may not accept a direct contribution from them because of the potential nexus between the motivation for the gift and your public duties. We note, however, that if the computer company were to make a gift to your Town consisting of an airline ticket, such a gift would not result in a violation of §3 since it would be a gift to a government agency rather than to an individual. See *EC-COI-84-114*. If the Town then utilizes the ticket to send you to the Committee meeting, an issue under §3 will not be raised.

<sup>2/</sup>Although your opinion request does not address the issue of a future computer purchase by your Town, we note that because of your membership on an advisory committee, if the computer company submits a bid proposal for a computer contract, an appearance of a conflict of interest may be created. In order to avoid such an appearance, you should at that time make a written disclosure to your appointing authority of your position on the Committee as well as the fact that the computer company is a bidder. See G.L. c. 268A, §23(b)(2).